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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. _____

HARRY R. GRAHAM and THELMA GRAHAM,

Petitioners,

versus

W. RANDOLPH HODGES, H. V. GIBSON and EDWARD G. LITTLE,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

Petitioners, HARRY R. GRAHAM and THELMA GRAHAM, by and through their undersigned attorneys, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-styled case on March 22, 1967.

CITATIONS TO OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit in the above-styled cause is recorded at 374 F.2d 340 (5th Cir. 1967).

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on March 22, 1967. The hearing was denied on May 8, 1967. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

Is it a deprivation of a person's liberty and property without due process of law under the Fourteenth Amendment to the U. S. Constitution for agents of a State of the United States to arrest one of its citizens on the high seas and confiscate his property where said agents have no lawful authority to do so under State law?

STATUTE INVOLVED

The statutory provision involved is 42 U.S.C. Section 1983. This statute is printed in Appendix, infra, pp. 11.

STATEMENT

On August 4, 1965, the Petitioners filed a complaint in the United States District Court for the Southern District of Florida and sued the Respondents under 42 U.S.C., § 1983 for the alleged deprivation of certain federally guaranteed civil rights (R.1-10). The complaint

was dismissed by the District Court for failure to state a cause of action (R.16). The Petitioners appealed and the United States Court of Appeals for the Fifth Circuit affirmed. **Graham v. Hodges**, 374 F.2d 340 (5th Cir. 1967).

The Petitioners' complaint alleged the following facts. The Petitioners are citizens of the United States, residents of Monroe County, Florida and engaged in the business of commercial salt water crawfishing (R. 1). The Respondents are State Conservation Agents employed by the State of Florida, i.e., the Director of the Florida State Board of Conservation, the Chief Law Enforcement Officer of the Division of Salt Water Fisheries of the Florida State Board of Conservation, and the Superintendent of Area 9 of the State Board of Conservation, Division of Salt Water Fisheries (R. 1-2). From July 20, 1963 through July 23, 1963, and from July 21, 1964 through July 26, 1964, the Petitioners were arrested on 8 occasions by Agents of the Respondents at locations on the high seas located more than three geographic miles off the coast of the Florida Keys (R. 2-8). As a result of these arrests, agents of the Respondents have dismantled approximately 250 crawfish traps belonging to the Petitioners which resulted in $875.00 worth of property damage. Moreover these traps were unavailable for use by Petitioners to realize a potential average catch amounting to $2,500.00 (R. 5-6). The Petitioners were required to post a bail bond on each of the above arrests amounting to a total of $1,200.00 (R.2-7). Although the cases for which the Petitioners have been arrested were docketed in the Criminal Court of Record in and for Monroe County, Florida, none of the cases have been called for trial (R.4,6). The arrests of the Petitioners have caused a great deal of embarrassment and humiliation causing a great loss of reputation in

addition to mental anguish and suffering (R.4,6). As a result of the arrests the Petitioners have been required to retain counsel for the sum of $150.00 and has been required to make approximately 10 trips to the City of Key West, Florida, at a distance of 160 miles per round trip (R.4).

Petitioners allege that the arrests to which they were subjected and the dismantling of their property all occurred over three geographic miles off the coast of the Florida Keys (R. 4-8). Petitioners allege that these arrests are accordingly unlawful and that the deprivation of their liberty and property was accomplished by Agents of the State of Florida in violation of their Constitutional rights guaranteed by the Fourteenth Amendment to the United States Constitution (R. 8). Petitioner Graham prayed for actual damages in the amount of $4,700.00, mental anguish damages in the amount of $5,000.00 and exemplary damages in the amount of $10,000.00 (R. 9). Petitioner Thelma Graham prayed for actual damages in the amount of $295.00, mental anguish damages in the amount of $5,000.00 and exemplary damages in the amount of $10,000.00 (R. 9).

REASONS FOR GRANTING WRIT

1. The Petitioners' arrests and the confiscation and destruction of their property by the Respondents constitutes a deprivation of liberty and property by the State of Florida without according due process of law in violation of the Petitioners' federal constitutional rights guaranteed against State invasion by the due process clause of the Fourteenth Amendment to the United States Constitution. The Respondents acting under

color of State authority arrested the Petitioners on 8 different occasions for alleged fishing violations. See **Fla. Stat. 370.14.** In each case the arrest was made over three geographical miles off the coast of various Florida Keys in the Atlantic Ocean. In each case a great number of the Petitioners' crawfish traps were either dismantled or confiscated by Agents of the Respondents, thereby causing over $3,000.00 in property damage.

The State of Florida has long limited its territorial jurisdiction to three geographical miles South of the Florida Keys coastline. Article 1, Florida Constitution 1885; **Fla. Stat. 6.11.** It is therefore beyond dispute that the Respondents' Agents, as alleged in Petitioners' complaint, arrested the Petitioners outside the territorial jurisdiction of the State of Florida on 8 different occasions, i.e. south of the Florida Keys beyond the three mile seaward boundary.

The Florida Supreme Court in **Gay v. State,** Fla. 1941, 3 So.2d 514, held that an arrest made by a State Conservation Agent outside the territorial limits of Florida on the high seas was unlawful under Florida law. The defendant in that case had been convicted for resisting a lawful arrest by a State Conservation Agent. The evidence showed that the arrest was effected more than nine nautical miles off the west coast of Florida in the Gulf of Mexico. The Florida Suprme Court reversed the defendant's conviction for resisting arrest on the ground that Conservation Agents had no lawful authority to arrest the defendant outside the seaward boundaries of the State of Florida.

The Florida Supreme Court in **Mounier v. State**, Fla. 1965, 178 So.2d 714, held that an act committed three and four-fifths nautical miles off Plantation Key in a southeasterly direction was no violation of a statute prohibiting spear fishing in the "Upper Keys" of Monroe County, Florida under **Fla. Stat. 370.172(2)**. It was held that acts committed outside the seaward boundaries of the State and the Upper Keys on the high seas cannot constitute an offense under the laws of the State of Florida.

Fla. Stat. 370.021(5) Empowers State Conservation Officers to "enter upon any land or waters of the State for performance of their lawful duties..."

In the instant case the Agents of the Respondents acting under color of State law arrested the Petitioners on 8 different occasions outside the seaward boundaries of the State of Florida, i.e. more than three geographic miles South and Southeast off the coast of the Florida Keys. These arrests were consequently made in violation of State law for acts which were not committed in the State of Florida and consequently were not offenses under the laws of the State of Florida. The Agents of the Respondents, without a shred of legal authority, have arrested the Petitioners on 8 different occasions and caused over $3,000.00 worth of property damage to the Petitioners in effecting these arrests.

The Court has held in **Monroe v. Pape**, 365 U.S. 167 (1961), that arrests made without legal authority by State Officers constitute invasions of privacy guaranteed by the Fourteenth Amendment. Such conduct was held actionable under the **Civil Rights Act, 42 U.S.C. § 1983.**

It is submitted that the Petitioners' complaint setting forth the unlawful arrest and subsequent destruction of property states a valid claim for damages based on a deprivation of civil rights guaranteed by the Fourteenth Amendment.

2. The decision of the United States Court of Appeals for the Fifth Circuit in the instant case passes upon a question of great national interest affecting the relations between a State and its own citizens. The Court below has written an opinion of some length which in effect authorizes State officials to arrest its own citizens on the high seas. **Graham v. Hodges,** 374 F.2d 337, 340 (5th Cir. 1967). This Court in **Skiriotes v. Florida,** 313 U.S. 69 (1940), has held that the States may govern "the conduct of its citizens upon the high seas with respect to matters in which the State has legitimate interest and where there was no conflict acts of Congress." Id. at 77. However, no court, including this Court, has ever authorized the State to make arrests of its citizens on the high seas in an effort to effectuate extra territorial regulation of its citizens. Moreover, no court, including this Court, has ever sanctioned such conduct when the State official in effecting an arrest on the high seas is acting in violation of State law. The Court below in its decision is the first Court to pass upon this highly important issue. The resolution of the issue against the citizen and in favor of the State of Florida particularly affects those citizens residing in states which border on the Atlantic Ocean, the Gulf of Mexico and the Pacific Ocean, particularly those citizens who are engaged in commercial salt water fishing. Certainly the entire issue of whether a State may arrest one its own citizens on

the high seas is a matter of enormous national interest which ought to be resolved by this Court.

3. The decision of the United States Court of Appeals for the Fifth Circuit in the instant case is erroneous. The Court has concluded that a Florida Conservation Agent has the authority under State law to arrest a citizen of the State of Florida on the high seas. The Court relies on **Fla. Stat. 370.021(5)** which empowers the Florida Conservation Board's Division of Salt Water Fisheries "to **regulate** the operations of all fishermen and vessels of this State engaged in the taking of such fishery resources within or without the boundaries of such State waters..." It is submitted that this Statute does not even remotely empower Conservation Agents to make arrests of Florida citizens on the high seas. It merely empowers a State Agency, to regulate the activity of the State fishing industry on the high seas. Obviously it does not empower Conservation Agents with the power to make arrests on the high seas. On the contrary, **Fla. Stat. 370.021(5)** empowers State Conservation Agents to make arrests only upon the land or waters of the State.

The Court has erroneously dismissed the case of **Gay v. State**, Fla. 1941, 3 So.2d 514 as being inapplicable. That case, however, is directly applicable to the case at bar. The Florida Supreme Court therein held that a Conservation Agent may not lawfully arrest a citizen of the State outside the seaward boundary of the State of Florida. The United States District Court for the Southern District of Florida has reached a similar result based upon the **Gay** case. **United States v. Sams**, (S.D. Fla. No. 64-401-Cr-Cf, Jan. 11, 1965).

The Court also misapplies the Florida Supreme Court decision of **Mounier v. State**, Fla. 1965, 178 So.2d 714. The Court seeks to distinguish the Mounier case on the ground that the case does not stand for the proposition that Florida's Conservation Officials cannot make arrests on the high seas. Although **Mounier** did not technically reach this result, the decision certainly stands for the proposition that an act committed outside the seaward boundaries of the Upper Keys, Monroe County and the State of Florida does not constitute a violation of **Fla. Stat. 370.172(2)** prohibiting spear fishing in the Upper Keys of Monroe County, Florida. It would therefore follow as night the day that the State has no authority to arrest a citizen on the high seas for acts which do not constitute violations of State law. Accordingly, Florida's Conservation Officials have no jurisdiction to make arrests outside the three mile offshore boundary fixed by the State's Constitution.

It is submitted that on the basis of the **Gay** and **Mounier** decisions of the Florida Supreme Court as well as **Fla. Stat. 370.021(5)** the arrests of the Petitioners outside the seaward boundaries of the State of Florida on the high seas constitute unlawful arrests under the law of the State of Florida. The arrests effected by Agents of the Respondents are in direct violation of the law of the State of Florida. The Court below has misread the Florida law on the subject.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

HENRY R. CARR, ESQ.
1440 Northwest 14th Avenue
Miami, Florida

WILLIAM B. SEIDEL, ESQ.
200 S. E. 6th Street
Fort Lauderdale, Florida, and

Phillip A. Hubbart

PHILLIP. A. HUBBART, ESQ.
1351 Northwest 12th Street
Miami, Florida
Counsel for Petitioners

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Certiorari was mailed to the office of the Honorable EARL FAIRCLOTH, Attorney General, Capitol Building, Tallahassee, Florida, this 6 day of September, 1967.

Phillip A. Hubbart

PHILLIP A. HUBBART

APPENDIX A

42 U.S.C. §1983. Civil Action for Deprivation of Rights. Every person, who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit and equity, or other proper proceedings for redress.

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Supreme Court, U.S.
FILED
OCT 9 1967
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 583

HARRY R. GRAHAM and THELMA GRAHAM,
Petitioners,

v.

W. RANDOLPH HODGES, H. V. GIBSON and EDWARD G. LITTLE, *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

OPPOSITION TO GRANTING PETITION FOR WRIT OF CERTIORARI FOR FAILURE TO APPLY WITHIN PRESCRIBED TIME

EARL FAIRCLOTH, ESQ.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. ——

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OPPOSITION TO GRANTING PETITION FOR WRIT OF CERTIORARI FOR FAILURE TO APPLY WITHIN PRESCRIBED TIME

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 347 F.2d 340 (5th Cir. 1967).

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED

Is it a deprivation of a person's liberty and property without due process of law under the Fourteenth Amendment to the United States Constitution for agents of a state of the United States to arrest one of its citizens on the high seas and confiscate his property where said agent has the lawful authority to regulate the citizen's activities under the state law where the state has a legitimate interest in the activities regulated and where there is no conflict with acts of Congress?

STATUTES INVOLVED

42 U.S.C., Section 1983, set forth in the petition as Appendix A; Section 370.02(5), Florida Statutes 1963, printed as Appendix A, *infra;* Section 370.14(1), Florida Statutes 1963, printed as Appendix B, *infra.*

STATEMENT

On August 4, 1965, the petitioners filed a complaint in the United States District Court for the Southern District of Florida and sued the respondents under 42 U.S.C., Section 1983, for the alleged deprivation of certain federally guaranteed civil rights (R 1-10). The complaint was dismissed by the District Court for failure to state a cause of action (R 16). The peti-

tioners appealed and the United States Court of Appeals for the Fifth Circuit affirmed the order of the District Court. *Graham* v. *Hodges*, 374 F.2d 340 (5th Cir. 1967).

As stated in the petition at pages 3-4, the petitioners' complaint did substantially make the allegations that the agents of the respondents arrested the petitioners between the dates of July 20, 1963, through July 23, 1963, and July 21, 1964, through July 26, 1964, confiscated certain articles of personalty, caused the petitioners to post appearance bonds and allegedly caused them personal hardship.

Although the petition brushes lightly over the reasons for the arrests, the record and the complaint clearly show that the alleged actions of the respondents occurred between the dates of July 20, 1963, through July 23, 1963, and from July 21, 1964, through July 26, 1964, for the principal reason that the petitioners were in violation of Section 370.14(1), Florida Statutes 1963, which prohibits the taking or possession of salt water crawfish regardless of where taken between March 31 and August 1 of each year.

ARGUMENT

I

THE DECISION BELOW IS CLEARLY CORRECT

The petitioners seek comfort in the Florida cases of *Gay* v. *State*, Fla. 1941, 3 So.2d 514, and *Mounier* v. *State*, Fla. 1965, 178 So.2d 714, on the premise that the cases hold that an arrest made by a state conservation agent outside of the territorial

limits of Florida on the high seas was unlawful under Florida law.

The decision of the United States Court of Appeals for the Fifth Circuit in the instant case adequately distinguished the *Mounier* case by holding that *Mounier* did not stand for the proposition that conservation officers have no jurisdiction whatsoever beyond the three-mile offshore boundary fixed by the state's constitution, in its decision at page 338, as follows:

". . . But Mounier does not stand for that proposition. The case was decided on the very narrow ground that the spearfishing regulation violated by Mounier by its terms applied only to a specified area in Monroe County, and the State failed to prove that the alleged offense occurred within that specified area.[2] In the course of the opinion, the court said:

" 'Before proceeding to a further discussion of the question, we deem it pertinent to point out that the statute above quoted makes spearfishing unlawful in an area "in Monroe county known as the Upper Keys." The language following the semicolon to the effect that said area shall include all waters under the jurisdiction of the State Board of Conservation, etc. must be construed as relating only to that area lying within Monroe County. *Whether the State Board of Conservation or the State of Florida through any other agency has jurisdiction over the waters or over the conduct of these defendants where the offense was committed or beyond that into the open ocean is a question not presented*

2. "Two other cases relied upon by appellant in a supplemental brief to support this proposition, United States v. Sands (S.D. Fla., No. 64-401-Cr-Cf, Jan 11, 1965), and Gay v. Florida, 147 Fla. 690, 3 So.2d. 514 (Fla. 1941), are similarly inapposite."

here and one on which we do not pass.' Id. at 715-716. (Emphasis added.) (Footnote omitted.)"

The court below then cited the statutory authority of the state of Florida to regulate the operation of all fishermen and vessels of this state engaged in the taking of such fishery resources within or without the boundaries of such state waters as found in Section 370.02(5), Florida Statutes.

On the basis of the foregoing, the United States Court of Appeals stated that if a state can properly regulate the activities of its citizens and extend the jurisdiction of its conservation officials to activities such as those which the petitioners claim to have been engaged in here under the Federal Constitution, the dismissal of the petitioners' complaint must be affirmed.

For this reason the United States Court of Appeals stated that this was the critical question and the critical question has been authoritatively answered and answered in the affirmative in *Skiriotes* vs. *State of Florida*, 313 U.S. 69, 61 S.Ct. 924, 85 L.Ed. 1193 (1941), where the issue was whether a Florida statute forbidding the use of diving equipment in the taking of commercial sponges had been unconstitutionally applied to convict the appellant who claimed immunity from Florida regulation by reason of the fact that he was operating outside the territorial limits of the state. Florida contended that her boundaries did in fact encompass the territory in question. The Supreme Court found it unnecessary to decide this question. Instead it said:

"Appellant's attack thus centers in the contention that the State has transcended its power simply because the statute has been applied to his operations inimical to its interests outside the territorial waters of Florida. The State denies

this, pointing to its boundaries as defined by the state constitution of 1868, which the State insists had the approval of Congress and in which there has been acquiescence over a long period.

"* * *

"[W]e do not find it necessary to resolve the contentions as to the interpretation and effect of the Act of Congress of 1868. *Even if it were assumed that the locus of the offense was outside the territorial waters of Florida, it would not follow that the State could not prohibit its own citizens from the use of the described divers' equipment at that place.* No question as to the authority of the United States over these waters, or over the sponge fishery, is here involved. No right of a citizen of any other State is here asserted. The question is solely between appellant and his own State. * * *

"If the United States may control the conduct of its citizens upon the high seas, we see no reason why the State of Florida may not likewise govern the conduct of its citizens upon the high seas with respect to matters in which the State has a legitimate interest and where there is no conflict with acts of Congress." Id. at 75-77, 61 S.Ct. at 929. (Emphasis added.)

The lower court then went on to find that Florida had a legitimate interest in controlling the activities which it sought to regulate in this case.

Your respondents submit that the *Skiriotes* case is the controlling case in this matter and the decision below is clearly correct.

II

THERE IS NO CONFLICT OF DECISION

Your respondents submit that since the *Skiriotes* case is the controlling law in the case at bar and the rule as applied in *Skiriotes* has not been overturned by this Court or any other court, there is no conflict of decisions.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General

ROBERT A. CHASTAIN
Assistant Attorney General

Counsel for Respondents

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. ——

HARRY R. GRAHAM and THELMA GRAHAM,
Petitioners,

v.

W. RANDOLPH HODGES, H. V. GIBSON and EDWARD G. LITTLE, *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI

OPPOSITION TO GRANTING PETITION FOR WRIT OF CERTIORARI FOR FAILURE TO APPLY WITHIN PRESCRIBED TIME

Respondents respectfully represent to the Court as follows:

1. The above entitled cause was argued and submitted on February 20, 1967, and an opinion was rendered and judgment entered on March 22, 1967, by the United States Court of Appeals for the Fifth Circuit. Petition for rehearing was denied on May 8, 1967.

2. On August 8, 1967, the ninety-second day since the entry of the order by the Court of Appeals denying the petition for

rehearing, the petitioners applied for an extension of time in which to file petition for writ of certiorari to this Court and the period for applying for a writ of certiorari has not been extended by a Justice of this Court [U.S.C., Title 28, Section 2101(c) and Rule 38 of this Court].

THEREFORE, it appears that the petitioners' application for a writ of certiorari is out of time and should be denied.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General

ROBERT A. CHASTAIN
Assistant Attorney General

The Capitol
Tallahassee, Florida

Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing brief for respondents in opposition to granting petition for writ of certiorari and opposition to granting petition for writ of certiorari for failure to apply within prescribed time was served by U.S. mail on Henry R. Carr, Esq., 1440 Northwest 14th Avenue, Miami, Florida, William B. Seidel, Esq., 200 S.E. 6th Street, Fort Lauderdale, Florida, and Phillip A. Hubbart, Esq., 1351 Northwest 12th Street, Miami, Florida, Counsel for Petitioners, this ..... day of October, 1967.

Robert A. Chastain
Of Counsel for Respondents

APPENDICES

APPENDIX A
(Florida Statutes, 1963)

370.02 *Board of Conservation.—*

* * *

(5) DIVISION OF SALT WATER FISHERIES; POWERS AND DUTIES.—

(a) It shall be the duty of the division of salt water fisheries to preserve, manage, and protect the marine, crustacean, shell and anadromous fishery resources of the state in the waters thereof; to regulate the operations of all fishermen and vessels of this state engaged in the taking of such fishery resources within or without the boundaries of such state waters, to issue licenses or provide for the issuance of licenses, prescribed by the legislature, for taking of the products of any or all such fisheries and the processing at sea or on shore within this state; to secure and maintain statistical records of the catch of each such species by various gear, by areas and by other appropriate classifications; to conduct scientific, economic and other studies and research, and to enter into contracts for such studies and research, all of which duties and operations shall be directed to the broad objective of managing such fisheries in the interest of all people of the state, to the end that they shall produce the maximum sustained yield consistent with the preservation and protection of the breeding stock.

(b) The division of salt water fisheries shall administer, coordinate, and enforce the provisions of §§370.03-370.17 and chapter 371.

(c) The board may employ a director of the division of salt water fisheries. The director shall possess such qualifications

as the board may prescribe, and he shall serve at the pleasure of the board. The director shall act as agent for the board in the employment of all necessary administrative and other personnel, including conservation agents and officers as may be necessary to carry out the work, duties and responsibilities of this division.

APPENDIX B
(Florida Statutes, 1963)

370.14 Crawfish; regulation.—

(1) CLOSED SEASON; PENALTY.—No salt water crawfish may be taken from waters of this state for commercial purposes and no person may have same in his possession, regardless of where taken, between March 31 and August 1 each year. Provided, however, that it is unlawful for any person at any time to take or have in his possession, regardless of where taken, any salt water crawfish with a shell measurement of tail of less than six inches for any purpose whatsoever. Any person violating this section shall, upon conviction, be punished by a fine not exceeding $250.00 or by imprisonment not exceeding 6 months.

(2) CARRIERS; PENALTY.—No common carrier or employee of said carrier may carry or knowingly receive for carriage or permit the carriage of any crawfish, regardless of where taken, between March 31 and August 1, of each year, except crawfish lawfully imported from a foreign country for reshipment outside of the territorial limits of the state; but in no case will such shipment be permitted to pass through the territorial limits of the state unless accompanied by certified invoice and same must be shipped from the port of entry. Any person violating this section shall, upon conviction, be punished by a fine not exceeding $250.00 or by imprisonment not exceeding 6 months.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 584

PERRY LEE FELTON,

Petitioner,

versus

W. RANDOLPH HODGES, H. V. GIBSON and EDWARD G. LITTLE,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

HENRY R. CARR, ESQ.
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Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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Petitioner, PERRY LEE FELTON, by and through his undersigned attorneys, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-styled case on March 22, 1967.

CITATIONS TO OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit in the above-styled cause is recorded at 374 F.2d 337 (5th Cir. 1967)

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on March 22, 1967. The hearing was denied on May 8, 1967. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

Is it a deprivation of a person's liberty and property without due process of law under the Fourteenth Amendment to the U. S. Constitution for agents of a State of the United States to arrest one of its citizens on the high seas and confiscate his property where said agents have no lawful authority to do so under State law?

STATUTE INVOLVED

The statutory provision involved is 42 U.S.C. Section 1983. This statute is printed in Appendix A, infra, pp. 12.

STATEMENT

On August 4, 1965, the Petitioner filed a complaint in the United States District Court for the Southern District of Florida and sued the Respondents under 42 U.S.C., § 1983 for the alleged deprivation of certain federally guaranteed civil rights (R.1-16). The complaint was dismissed by the District Court for failure to state a cause of action (R.22). On appeal the United States Court of Appeals for the Fifth Circuit affirmed. **Felton v. Hodges**, 374 F.2d 337 (5th Cir. 1967).

The Petitioner's complaint alleged the following facts.

The Petitioner is a citizen of the United States, a resident of Monroe County, Florida, and is engaged in commercial salt water crawfishing (R.1). The Respondents are State Conservation Agents employed by the State of Florida, i.e. the Director of the Florida State Board of Conservation, the Chief Law Enforcement Officer of the Division of Salt Water Fisheries of the Florida State Board of Conservation, and the Superintendent of Area 9 of the State Board of Conservation, Division of Salt Water Fisheries (R.1-2). Between the dates July 20, 1963 and July 28, 1963, the Petitioner was arrested by Agents of the Respondents on four different occasions more than three miles off the shore of the Florida Keys (R.2-4). During these arrests, Agents of the Respondents seized ten of the Petitioner's crawfish traps and released therefrom the crawfish contained in each trap (R.4). The traps were valued at $8.50 per trap and contained approximately $5.00 worth of crawfish in each trap (R.4). Each trap produced approximately $50.00 worth of crawfish per season (R.4). As a result of these arrests, the Petitioner was required to post a total of $550.00 in appearance bonds and retain an attorney for the sum of $150.00 (R.2-4). As a result of these arrests the Petitioner was required to make approximately seven trips to the City of Key West, Florida, at a distance of approximately 160 miles per round trip (R.4).

Between the dates July 24, 1964 and July 28, 1964 the Petitioner was arrested by agents of the Respondents on 16 different occasions, more than three geographic miles from the coast of the Florida Keys (R.4-12). On or about July 28, 1964, the agents of the Respondents destroyed the lids on 992 of the Petitioner's crawfish traps (R.12). On the same date the same agents directed the Petitioner to destroy an additional 363 crawfish traps belonging to

the Petitioner (R.12). As a result the Petitioner had to pay over $5,000.00 to repair the crawfish traps that had been dismantled by agents of the Respondents (R.12). Furthermore the Petitioner lost over $13,000.00 in crawfish sales which he could have realized had the traps not been disturbed by agents of the Respondents (R.12-13). The Petitioner was required to post a total of $16,000.00 in bail bonds on the arrests effected in July, 1964 (R.4-12).

On each of the above twenty arrests to which the Petitioner was subjected by agents of the Respondents, the Petitioner was charged with various violations of the State Fishing Laws. See Fla. Stat. 370.14. Each of the cases on which the Petitioner was arrested had been docketed in the Criminal Court of Record in and for Monroe County, Florida, but none of the cases have ever been called for trial (R.4, 13). As a result of these arrests, Petitioner has been humiliated and embarrassed by being taken to jail, restrained of his liberty, being required to post bond, all of which became known to the citizens of his community causing him great loss of reputation in addition to mental anguish and suffering (R. 4, 13).

Petitioner alleges that the arrests were unlawful because they were effected more than three geographic miles off the coast of the Florida Keys, that as a result thereof Petitioner has been deprived of his Constitutional rights guaranteed to him by the Fourteenth Amendment to the United States Constitution (R. 13). The petitioner prayed for a judgment of $20,593.00 in actual damages, $7,500.00 damages for mental anguish, and $25,000 for exemplary damages (R.14).

REASONS FOR GRANTING WRIT

1. The Petitioner's arrests and the confiscation and destruction of his property by the Respondents constitutes a deprivation of liberty and property by the State of Florida without according due process of law in violation of the Petitioner's federal constitutional rights guaranteed against State invasion by the due process clause of the Fourteenth Amendment to the United States Constitution. The Respondents acting under color of State authority arrested the Petitioner on twenty different occasions or alleged fishing violations. See Fla. Stat. 370.14. In each case the arrest was made over three geographical miles off the coast of various Florida Keys in the Atlantic Ocean. In each case a great number of the Petitioner's crawfish traps were either dismantled or confiscated by agents of the Respondents, thereby causing over $20,000.00 in property damage.

The State of Florida has long limited its territorial jurisdiction to three geographical miles South of the Florida Keys coastline. Article 1, Florida Constitution 1885; **Fla. Stat. 6.11.** It is therefore beyond dispute that the Respondents' Agents, as alleged in Petitioner's complaint, arrested the Petitioner outside the territorial jurisdiction of the State of Florida on 20 different occasions, i.e. south of the Florida Keys beyond the three mile seaward boundary.

The Florida Supreme Court in **Gay v. State,** Fla. 1941, 3 So.2d 514, held that an arrest made by a State Conservation Agent outside the territorial limits of Florida on the high seas was unlawful under Florida law. The defendant in that case had been convicted for

resisting a lawful arrest by a State Conservation Agent. The evidence showed that the arrest was effected more than nine nautical miles off the west coast of Florida in the Gulf of Mexico. The Florida Suprme Court reversed the defendant's conviction for resisting arrest on the ground that Conservation Agents had no lawful authority to arrest the defendant outside the seaward boundaries of the State of Florida.

The Florida Supreme Court in **Mounier v. State,** Fla. 1965, 178 So.2d 714, held that an act committed three and four-fifths nautical miles off Plantation Key in a southeasterly direction was no violation of a statute prohibiting spear-fishing in the "Upper Keys" of Monroe County, Florida under **Fla. Stat. 370.172(2).** It was held that acts committed outside the seaward boundaries of the State and the Upper Keys on the high seas cannot constitute an offense under the laws of the State of Florida.

Fla. Stat. 370.021(5) Empowers State Conservation Officers to "enter upon any land or waters **of the State** for performance of their lawful duties..."

In the instant case the Agents of the Respondents acting under color of State law arrested the Petitioner on twenty different occasions outside the seaward boundaries of the State of Florida, i.e. more than three geographic miles South and Southeast off the coast of the Florida Keys. These arrests were consequently made in violation of State law for acts which were not committed in the State of Florida and consequently were not offenses under the laws of the State of Florida. The agents of the Respondents, without a shred of legal authority, have

arrested the Petitioner on twenty different occasions and caused $20,000.00 worth of property damage to the Petitioner in effecting these arrests.

The Court has held in **Monroe v. Pape,** 365 U.S. 167 (1961), that arrests made without legal authority by State Officers constitute invasions of privacy guaranteed by the Fourteenth Amendment. Such conduct was held actionable under the **Civil Rights Act, 42 U.S.C. § 1983.** It is submitted that the Petitioner's complaint setting forth the unlawful arrests and subsequent destruction of property states a valid claim for damages based on a deprivation of civil rights guaranteed by the Fourteenth Amendment.

2. The decision of the United States Court of Appeals for the Fifth Circuit in the instant case passes upon a question of great national interest affecting the relations between a State and its own citizens. The Court below has written an opinion of some length which in effect authorizes State officials to arrest its own citizens on the high seas. **Felton v. Hodges,** 374 F.2d 337 (5th Cir. 1967). This Court in **Skiriotes v. Florida,** 313 U.S. 69 (1940), has held that the States may govern "the conduct of its citizens upon the high seas with respect to matters in which the State has legitimate interest and where there was no conflict acts of Congress." Id. at 77. However, no court, including this Court, has ever authorized the State to make arrests of its citizens on the high seas in order to effectuate extra territorial regulation of its citizens. Moreover, no court, including this Court, has ever sanctioned such conduct when the State official in effecting an arrest on the high seas is acting in violation of State law. The Court below

in its decision is the first Court to pass upon this highly important issue. The resolution of the issue against the citizen and in favor of the State of Florida particularly affects those citizens residing in states which border on the Atlantic Ocean, the Gulf of Mexico and the Pacific Ocean, particularly those citizens who are engaged in commercial salt water fishing. Certainly the entire issue of whether a State may arrest one its own citizens on the high seas is a matter of enormous national interest which ought to be resolved by this Court.

3. The decision of the United States Court of Appeals for the Fifth Circuit in the instant case is erroneous. The Court has concluded that a Florida Conservation Agent has the authority under State law to arrest a citizen of the State of Florida on the high seas. The Court relies on **Fla. Stat. 370.021(5)** which empowers the Florida Conservation Board's Division of Salt Water Fisheries "to **regulate** the operations of all fishermen and vessels of this State engaged in the taking of such fishery resources within or without the boundaries of such State waters..." It is submitted that this Statute does not even remotely empower Conservation Agents to make arrests of Florida citizens on the high seas. It merely empowers a State Agency, to regulate the activity of the State fishing industry on the high seas. Obviously it does not empower Conservation Agents with the power to make arrests on the high seas. On the contrary, **Fla. Stat. 370.021(5)** empowers State Conservation Agents to make arrests only upon the land or waters of the State.

The Court has erroneously dismissed the case of **Gay v. State**, Fla. 1941, 3 So.2d 514 as being inapplicable. That

case, however, is directly applicable to the case at bar. The Florida Supreme Court therein held that a Conservation Agent may not lawfully arrest a citizen of the State outside the seaward boundary of the State of Florida. The United States District Court for the Southern District of Florida has reached a similar result based upon the **Gay** case. **United States v. Sams,** (S.D. Fla. No. 64-401-Cr-Cf, Jan. 11, 1965).

The Court also misapplies the Florida Supreme Court decision of **Mounier v. State,** Fla. 1965, 178 So.2d 714. The Court seeks to distinguish the Mounier case on the ground that the case does not stand for the proposition that Florida's Conservation Officials cannot make arrests on the high seas. Although **Mounier** did not technically reach this result, the decision certainly stands for the proposition that an act committed outside the seaward boundaries of the Upper Keys, Monroe County and the State of Florida does not constitute a violation of **Fla. Stat. 370.172(2)** prohibiting spear fishing in the Upper Keys of Monroe County, Florida. It would therefore follow as night the day that the State has no authority to arrest a citizen on the high seas for acts which do not constitute violations of State law. Accordingly, Florida's Conservation Officials have no jurisdiction to make arrests outside the three mile offshore boundary fixed by the State's Constitution.

It is submitted that on the basis of the **Gay** and **Mounier** decisions of the Florida Supreme Court as well as **Fla. Stat. 370.021(5)** the arrests of the Petitioners outside the seaward boundaries of the State of Florida on the high seas constitute unlawful arrests under the law of the State of Florida. The arrests effected by Agents

of the Respondents are in direct violation of the law of the State of Florida. The Court below has misread the Florida law on the subject.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

HENRY R. CARR, ESQ.
1440 Northwest 14th Avenue
Miami, Florida

WILLIAM B. SEIDEL, ESQ.
200 S. E. 6th Street
Fort Lauderdale, Florida, and

PHILLIP. A. HUBBART, ESQ.
1351 Northwest 12th Street
Miami, Florida
Counsels for Petitioner

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Certiorari was mailed to the office of the Honorable EARL FAIRCLOTH, Attorney General, Capitol Building, Tallahassee, Florida, this 6 day of September, 1967.

PHILLIP A. HUBBART

APPENDIX A

42 U.S.C. §1983. Civil Action for Deprivation of Rights. Every person, who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit and equity, or other proper proceedings for redress.

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JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 584

PERRY LEE FELTON, *Petitioner*,

v.

W. RANDOLPH HODGES, H. V. GIBSON and EDWARD G. LITTLE, *Respondents*.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

OPPOSITION TO GRANTING PETITION FOR WRIT OF CERTIORARI FOR FAILURE TO APPLY WITHIN PRESCRIBED TIME

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OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 347 F.2d 337 (5th Cir. 1967).

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED

Is it a deprivation of a person's liberty and property without due process of law under the Fourteenth Amendment to the United States Constitution for agents of a state of the United States to arrest one of its citizens on the high seas and confiscate his property where said agent has the lawful authority to regulate the citizen's activities under the state law where the state has a legitimate interest in the activities regulated and where there is no conflict with acts of Congress?

STATUTES INVOLVED

42 U.S.C., Section 1983, set forth in the petition as Appendix A; Section 370.02(5), Florida Statutes 1963, printed as Appendix A, *infra;* Section 370.14(1), Florida Statutes 1963, printed as Appendix B, *infra.*

STATEMENT

On August 4, 1965, the petitioner filed a complaint in the United States District Court for the Southern District of Florida and sued the respondents under 42 U.S.C., Section 1983, for the alleged deprivation of certain federally guaranteed civil rights (R 1-16). The complaint was dismissed by the District Court for failure to state a cause of action (R 22). On appeal, the

United States Court of Appeals for the Fifth Circuit affirmed the order of the District Court. *Felton* v. *Hodges*, 374 F.2d 337 (5th Cir. 1967).

As stated in the petition (pp. 2-4), the petitioner's complaint did substantially make the allegations that the agents of the respondents arrested the petitioner between the dates of July 20, 1964, and July 28, 1964, confiscated certain articles of personalty, caused the petitioner to post an appearance bond and allegedly caused him personal hardship.

Although the petition brushes lightly over the reasons for the arrest, the record and the complaint clearly show that the alleged actions of the respondents occurred between the dates of July 20, 1964, and July 28, 1964, for the main reason that the petitioner was in violation of Section 370.14(1), Florida Statutes 1963, which prohibits the taking or possession of salt water crawfish regardless of where taken, between March 31 and August 1 of each year.

ARGUMENT

I

THE DECISION BELOW IS CLEARLY CORRECT

The petitioner seeks comfort in the Florida cases of *Gay* v. *State*, Fla. 1941, 3 So.2d 514, and *Mounier* v. *State*, Fla. 1965, 178 So.2d 714, on the premise that the cases hold that an arrest made by a state conservation agent outside of the territorial

limits of Florida on the high seas was unlawful under Florida law.

The decision of the United States Court of Appeals for the Fifth Circuit in the instant case adequately distinguished the *Mounier* case by holding that Mounier did not stand for the proposition that conservation officers have no jurisdiction whatsoever beyond the three-mile offshore boundary fixed by the State's constitution in its decision at page 338, as follows:

> ". . . But Mounier does not stand for that proposition. The case was decided on the very narrow ground that the spearfishing regulation violated by Mounier by its terms applied only to a specified area in Monroe County, and the State failed to prove that the alleged offense occurred within that specified area.[2] In the course of the opinion, the court said:
>
> "'Before proceeding to a further discussion of the question, we deem it pertinent to point out that the statute above quoted makes spearfishing unlawful in an area "in Monroe county known as the Upper Keys." The language following the semicolon to the effect that said area shall include all waters under the jurisdiction of the State Board of Conservation, etc. must be construed as relating only to that area lying within Monroe County. *Whether the State Board of Conservation or the State of Florida through any other agency has jurisdiction over the waters or over the conduct of these defendants where the offense was committed or beyond that into the open ocean is a question*

2. "Two other cases relied upon by appellant in a supplemental brief to support this proposition, United States v. Sands (S.D. Fla., No. 64-401-Cr-Cf, Jan 11, 1965), and Gay v. Florida, 147 Fla. 690, 3 So.2d. 514 (Fla. 1941), are similarly inapposite."

not presented here and one on which we do not pass.' Id. at 715-16. (Emphasis added.) (Footnote omitted.)"

The court below then cited the statutory authority of the state of Florida to regulate the operation of all fishermen and vessels of this state engaged in the taking of such fishery resources within or without the boundaries of such state waters as found in Section 370.02(5), Florida Statutes.

On the basis of the foregoing, the United States Court of Appeals stated that if a state can properly regulate the activities of its citizens and extend the jurisdiction of its conservation officials to activities such as those which the petitioner claims to have been engaged in here under the Federal Constitution, the dismissal of the petitioner's complaint must be affirmed.

For this reason the United States Court of Appeals stated that this was the critical question and the critical question has been authoritatively answered and answered in the affirmative in *Skiriotes* vs. *State of Florida*, 313 U.S. 69, 61 S.Ct. 924, 85 L.Ed. 1193 (1941), where the issue was whether a Florida statute forbidding the use of diving equipment in the taking of commercial sponges had been unconstitutionally applied to convict the appellant who claimed immunity from Florida regulation by reason of the fact that he was operating outside the territorial limits of the state. Florida contended that her boundaries did in fact encompass the territory in question. The Supreme Court found it unnecessary to decide this question. Instead it said:

"Appellant's attack thus centers in the contention that the State has transcended its power simply because the statute has been applied to his operations inimical to its interests outside the territorial waters of Florida. The State denies this, pointing to its boundaries as defined by the state con-

stitution of 1868, which the State insists had the approval of Congress and in which there has been acquiescence over a long period.

"* * *

"[W]e do not find it necessary to resolve the contentions as to the interpretation and effect of the Act of Congress of 1868. *Even if it were assumed that the locus of the offense was outside the territorial waters of Florida, it would not follow that the State could not prohibit its own citizens from the use of the described divers' equipment at that place.* No question as to the authority of the United States over these waters, or over the sponge fishery, is here involved. No right of a citizen of any other State is here asserted. The question is solely between appellant and his own State. * * *

"If the United States may control the conduct of its citizens upon the high seas, we see no reason why the State of Florida may not likewise govern the conduct of its citizens upon the high seas with respect to matters in which the State has a legitimate interest and where there is no conflict with acts of Congress." Id. at 76-77, 61 S.Ct. at 929 (Emphasis added.)

The lower Court then went on to find that Florida had a legitimate interest in controlling the activities which it sought to regulate in this case.

Your respondents submit that the *Skiriotes* case is the controlling case in this matter and the decision below is clearly correct.

II

THERE IS NO CONFLICT OF DECISION

Your respondents submit that since the *Skiriotes* case is the controlling law in the case at bar and the rule as applied in *Skiriotes* has not been overturned by this Court or any other court, there is no conflict of decisions.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General

ROBERT A. CHASTAIN
Assistant Attorney General

Attorneys for Respondents

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. ——

PERRY LEE FELTON, *Petitioner*,

v.

W. RANDOLPH HODGES, H. V. GIBSON and EDWARD G. LITTLE, *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI

OPPOSITION TO GRANTING PETITION FOR WRIT OF CERTIORARI FOR FAILURE TO APPLY WITHIN PRESCRIBED TIME

Respondents respectfully represent to the Court as follows:

1. The above entitled cause was argued and submitted on February 20, 1967, and an opinion was rendered and judgment entered on March 22, 1967, by the United States Court of Appeals for the Fifth Circuit. Petition for rehearing was denied on May 8, 1967.

2. On August 8, 1967, the ninety-second day since the entry of the order by the Court of Appeals denying the petition for rehearing, the petitioner applied for an extension of time in which to file petition for writ of certiorari to this Court and

the period for applying for a writ of certiorari has not been extended by a justice of this Court [U.S.C., Title 28, Section 2101(c) and Rule 38 of this Court].

THEREFORE, it appears that the petitioner's application for a writ of certiorari is out of time and should be denied.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General

ROBERT A. CHASTAIN
Assistant Attorney General

The Capitol
Tallahassee, Florida

Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing brief for respondents in opposition to granting petition for writ of certiorari and opposition to granting petition for writ of certiorari for failure to apply within prescribed time was served by U.S. mail on Henry R. Carr, Esq. 1440 Northwest 14th Avenue, Miami, Florida, William B. Seidel, Esq., 200 S.E. 6th Street, Fort Lauderdale, Florida, and Phillip A. Hubbart, Esq., 1351 Northwest 12th Street, Miami, Florida, Counsel for Petitioner, this ..... day of October, 1967.

Robert A. Chastain
Of Counsel for Respondents

APPENDICES

APPENDIX A

(Florida Statutes, 1963)

370.02 Board of Conservation.—

* * *

(5) DIVISION OF SALT WATER FISHERIES; POWERS AND DUTIES.—

(a) It shall be the duty of the division of salt water fisheries to preserve, manage, and protect the marine, crustacean, shell and anadromous fishery resources of the state in the waters thereof; to regulate the operations of all fishermen and vessels of this state engaged in the taking of such fishery resources within or without the boundaries of such state waters, to issue licenses or provide for the issuance of licenses, prescribed by the legislature, for taking of the products of any or all such fisheries and the processing at sea or on shore within this state; to secure and maintain statistical records of the catch of each such species by various gear, by areas and by other appropriate classifications; to conduct scientific, economic and other studies and research, and to enter into contracts for such studies and research, all of which duties and operations shall be directed to the broad objective of managing such fisheries in the interest of all people of the state, to the end that they shall produce the maximum sustained yield consistent with the preservation and protection of the breeding stock.

(b) The division of salt water fisheries shall administer, coordinate, and enforce the provisions of §§370.03-370.17 and chapter 371.

(c) The board may employ a director of the division of salt water fisheries. The director shall possess such qualifications as the board may prescribe, and he shall serve at the pleasure of the board. The director shall act as agent for the board in the employment of all necessary administrative and other personnel, including conservation agents and officers as may be necessary to carry out the work, duties and responsibilities of this division.

APPENDIX B

(Florida Statutes, 1963)

370.14 Crawfish; regulations.—

(1) CLOSED SEASON; PENALTY.—No salt water crawfish may be taken from waters of this state for commercial purposes and no person may have same in his possession, regardless of where taken, between March 31 and August 1 each year. Provided, however, that it is unlawful for any person at any time to take or have in his possession, regardless of where taken, any salt water crawfish with a shell measurement of tail of less than six inches for any purpose whatsoever. Any person violating this section shall, upon conviction, be punished by a fine not exceeding $250.00 or by imprisonment not exceeding 6 months.

(2) CARRIERS; PENALTY.—No common carrier or employee of said carrier may carry or knowingly receive for carriage or permit the carriage of any crawfish, regardless of where taken, between March 31 and August 1, of each year, except crawfish lawfully imported from a foreign country for reshipment outside of the territorial limits of the state; but in no case will such shipment be permitted to pass through the territorial limits of the state unless accompanied by certified invoice and same must be shipped from the port of entry. Any person violating this section shall, upon conviction, be punished by a fine not exceeding $250.00 or by imprisonment not exceeding 6 months.